## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:06CV79-01-MU

JAMES A.G. BUNCH, JR.,	)
Plaintiff,	)
v.	ORDER
STATE OF NORTH CAROLINA, et al.,	)
Defendants.	)
	)

**THIS MATTER** is before the Court upon Plaintiff's Motion to Reconsider, filed April 6, 2006.

On February 22, 2006, Plaintiff filed a Complaint on a 42 U.S.C. § 1983 form against the State of North Carolina and Rick Jackson, the superintendent of the correctional facility where he is incarcerated, asserting that the North Carolina Supreme Court had abused its discretion by dismissing without comment his petition for discretionary review in his state court criminal case when he had "complained colorably that he was tried and convicted... when the court clearly lacked jurisdiction to try any of the cases." As a remedy, Plaintiff sought to have this Court vacate his state court criminal convictions and remand his case to the Hertford County Superior Court with instructions to dismiss his case.

This Court concluded that because Plaintiff was seeking to overturn his state court conviction, his claim was most properly brought as a habeas claim rather than a § 1983 claim. Moreover, because Plaintiff was convicted and sentenced in Hertford County, any § 2254 habeas claim by Petitioner had to be filed in the United States District Court for the Eastern District of North

Carolina. Consequently, this Court dismissed Plaintiff's Complaint.

Plaintiff has filed the instant motion to reconsider asserting that this Court erred in construing

his Complaint as a § 2241 petition. A review of this Court's order reveals that this Court did not

construe Plaintiff's Complaint as a § 2241 petition. As this Court stated in its previous Order,

pursuant to the provisions of Section 2241(d) of Title 28 of the United States Code, and in

accordance with a joint order of the United States District Courts for the Eastern, Middle, and

Western Districts of North Carolina, a habeas action should be filed in the district within which the

state court was held which convicted and sentenced Plaintiff. Consequently, any habeas action

pursuant to 28 U.S.C. § 2254 filed by Plaintiff must be done so in the United States District Court

for the Eastern District of North Carolina.

THEREFORE IT IS HEREBY ORDERED that Plaintiff's Motion to Reconsider is

DENIED.

Signed: April 10, 2006

Graham C. Mullen

United States District Judge

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